

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                               |   |                       |
|-------------------------------|---|-----------------------|
| HODELL-NATCO INDUSTRIES, INC. | ) | CASE NO. 1:08 CV 2755 |
|                               | ) |                       |
| Plaintiff,                    | ) | JUDGE: LESLEY WELLS   |
|                               | ) |                       |
| -vs.-                         | ) |                       |
|                               | ) |                       |
| SAP AMERICA, INC., et al.     | ) |                       |
|                               | ) |                       |
| Defendants.                   | ) |                       |

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PLAINTIFF HODELL-NATCO INDUSTRIES, INC.'S MOTION FOR LEAVE TO  
FILE SURREPLY IN OPPOSITION TO THE SAP DEFENDANTS' UNTIMELY  
MOTION *IN LIMINE* TO PRECLUDE DAMAGES EVIDENCE

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Plaintiff Hodell-Natco Industries, Inc., by and through undersigned counsel, respectfully moves this Court for leave to file a surreply in opposition to the Motion *in Limine*, untimely filed, to preclude what is wrongly called “improper damages evidence” filed by Defendants SAP America, Inc. and SAP AG (collectively “SAP”) [ECF #254] and in response to SAP’s Reply Brief in support of its untimely Motion [ECF #257]. Hodell’s surreply will be limited to seven (7) pages and will be filed within five (5) days of the Court granting this Motion for Leave.

The need to address the erroneous arguments raised in SAP’s Motion and reiterated in the Reply is obviously of great importance to the ultimate fairness to Hodell at trial, as SAP belatedly seeks to exclude millions of dollars of damages from Hodell’s case. Hodell has spent considerable time and resources pursuing these damages in

discovery. SAP has known full well and in microscopic detail the categories of Hodell's damages and the manner in which they were computed by Hodell's CEO Otto Reidl for years. This issue is simply too important to allow SAP's untimely and demonstrably untrue attack to go unanswered. For these same reasons, Hodell renews its prior request for oral argument on SAP's Motion. SAP has not objected to that request.

Good cause exists for granting this Motion, and Hodell should be able to respond to SAP's Reply for, at a minimum, the following reasons:

- SAP's Reply Brief misrepresents the written record by using ellipses to conceal the true context of statements in the documents it purports to quote. (See e.g., SAP Reply at p. 5, omitting relevant discourse wherein the undersigned specifically stated Mr. Reidl could testify about his own damages calculations and then permitted hours of questions by SAP's counsel on Mr. Reidl's damages calculations (O. Reidl Trans. at 341:24-342:06)). This material omission misleads the Court.
- SAP string cites multiple unreported decisions from other jurisdictions but fails to reveal vital facts from each opinion which completely distinguish those holdings from the case at bar (SAP Reply at pp. 2-4). This material omission misleads the Court.
- SAP continues to completely misrepresent the deposition testimony of Otto Reidl, including Mr. Reidl's specific and lengthy identification of his "computation of damages" which is entirely different in material respects from the opinions of Dr. Kennedy that this Court has preliminarily excluded (SAP Reply at pp. 5-10). This material omission misleads the Court.

- SAP ignores that the LSi co-defendants have not objected to or otherwise moved to preclude Hodell's damages evidence, and thus, the evidence will be admissible against the LSi defendants.
- SAP raises new arguments (at pp. 6-10) under Fed.R.Evid. 701 that were not contained in its opening brief and to which Hodell has had no opportunity to respond. Hodell should have an opportunity to respond or these arguments should be stricken.

WHEREFORE, Hodell respectfully requests leave to respond to SAP's Reply through a brief not to exceed seven (7) pages that will be filed within five (5) days of the granting of this Motion. Hodell also renews its request for oral argument on SAP's Motion *in Limine* to exclude Hodell's damages. Should the Court's calendar not permit oral argument to be had prior to the scheduled trial date, Hodell would consent to a referral to the Magistrate Judge to preside over such argument as has occurred with prior motion practice and discovery-related issues in this case.

Respectfully submitted,

/s/ P. Wesley Lambert

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of December, 2012, a copy of preceding document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*/s/ P. Wesley Lambert*

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